

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2015

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THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.Nos.17513 to 17516 of 2015

S.Vinayagamoorthy ... Petitioner in W.P.No.17513/15
K.Gangatharan ... Petitioner in W.P.No.17514/15
G.Kumar ... Petitioner in W.P.No.17515/15
M.Ramu ... Petitioner in W.P.No.17516/15

Vs.

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Transport Department,
Fort St. George, Chennai-9.
2. State Express Transport Corporation Ltd.,
(Formerly known as Rajiv Gandhi Transport
Corporation Ltd/J.J.T.C. Ltd.,)
Rep. by its Managing Director,
No.2, Pallavan Salai, Chennai-600 002.
... Respondents in all W.Ps.

Prayer : Writ Petition are filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents to re-employ the respective petitioners as Conductor in the second respondent corporation or any other Government owned Transport Corporation in compliance with the direction of this Court made in W.A.No.1294 to 1299 of 1997 and W.P.No.32389 of 2006, W.P.No.9511/98, W.P.No.9512/98 and W.P.No.13024/98 respectively dated 01.12.2006 by considering the petitioner's representation dated 05.01.2015.

For Petitioners in : Mr.S.Packiaraj
all these W.Ps.

For Respondents in : Mr.S.Gunasekaran,
all these W.Ps. Government Advocate for R1

Mr.P.Paramasivadosh for R2

COMMON ORDER

When the retrenched Conductors and Drivers approached this Court, a Division Bench of this Court in the judgment dated 08.12.1997 in W.A.Nos.1294 of 1997 etc. batch, issued the following direction :

"The appellant Corporation is directed to undertake an exercise of deciding each individual case where a worker has completed 240 days and Section 25-F has not been complied with. The workers shall be reinstated with all the backwages and with all consequential benefits."

2. The petitioners in W.P.Nos.17514 to 17516 of 2015, who were retrenched Conductors, filed W.P.Nos.9511, 9512 and 13024 of 1998 respectively seeking the relief based on the aforesaid judgment of the Division Bench of this Court dated 08.12.1997 in W.A.Nos.1294 of 1997 etc. batch on the ground that they also rendered more than 240 days of service in a year. Those writ petitions were disposed of in terms of the Division Bench judgment, referred to above. The petitioner in W.P.No.17513 of 2015, who was a retrenched Conductor, filed W.P.No.32389 of 2006 seeking the similar relief and the said writ petition was disposed of granting similar relief.

3. The petitioners themselves have enclosed in the typed-set of papers the letters sent by the respondent Corporation stating that their claim could not be considered, since they did not render 240 days of service in a year.

4. But the learned counsel for the petitioners sought to argue that the petitioners rendered more than 240 days of service and he relied on certain documents, that are enclosed in the typed-set of papers.

5. While so, the counsel for the respondent Corporation disputed those documents and submitted that the question as to whether the petitioners worked for more than 240 days in a year is a question of fact and the same has to be decided by the appropriate forum in the manner to law.

6. I am in agreement with the submission made by the learned counsel for the respondent corporation. This Court cannot go into factual issue as to whether the workmen worked

for 240 days, by looking into the records produced by the workmen, when those documents are disputed by the respondent Corporation.

7. Since the respondent Corporation stated that the workman did not work for more than 240 days, I am not inclined to issue a direction to the respondent Corporation to reinstate the workman, as prayed for in these writ petition.

8. A Division Bench of this Court in the judgment in M.Sekaran V. General Manager, Tamil Nadu State Transport Corporation, Coimbatore Division II, Erode, reported in 2006 (1) LLJ 257, considering the Division Bench judgment referred to above, held in para 34 (iii) giving relief to retrench Conductors/Drivers in the Transport Corporation. The said paragraph is extracted hereunder :

"34.... (iii) (a) In other writ petitions direction is issued to the respondents-Transport Corporations to provide re-employment to the writ petitioners, who completed 240 days in the respective Corporations and satisfied other conditions, if any, in accordance with S.25H of the Industrial Disputes Act in preference to new entrants.

(b) Those (writ-petitioners) who worked less than 240 days shall also be given re-employment and their services will be regularised, only after completion of 240 days and subject to fulfilling other conditions, if any."

9. When the matter was taken to the Apex Court questioning the aforesaid order of the Division Bench, the Apex Court in the judgment dated 13.08.2010 in Civil Appeal Nos.6582 of 2010 etc. batch, set aside 34 (iii) (b) and the order of the Apex Court is extracted hereunder :

"..... on the facts of this case and particularly since subsequent to the judgment of the High Court certain orders, e.g., order dated 13.07.2006, have been passed by the State Government, we uphold the direction of the High Court contained in paragraph 34(iii)(a) of the impugned judgment that those workmen who have completed 240 days of service within one year prior to the date of termination of service shall be reinstated. But the direction of the High Court contained in paragraph 34(iii)(b) of the impugned

judgment that "those (writ petitioners) who worked less than 240 days shall also be given re-employment and their services will be regularised, only after completion of 240 days and subject to fulfilling other conditions, if any." is set aside."

10. In these circumstances, these writ petitions are liable to be dismissed. However, this would not preclude the petitioners from approaching the Labour Court to establish their case that they worked for more than 240 days and that they are entitled to reinstatement and also to claim preference in employment under Section 25-H of the Industrial Disputes Act, 1947, even if they worked for less than 240 days.

11. Since the termination of the petitioners took place very much prior to the amendment made by the Central Government in the Industrial Disputes Act prescribing limitation for approaching the labour court vide the Industrial Disputes (Amendment) Act, 2010 (Central Act 24 of 2010), and the petitioners have also been diligently agitating the matter before this Court in various proceedings, the Conciliation Officer is directed to take up the industrial dispute relating to the unemployment of the petitioners for conciliation and the Labour Court concerned is directed to adjudicate the industrial dispute without reference to limitation.

12. With the aforesaid observations, these writ petitions are dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1. The Secretary,
Transport Department,
Government of Tamil Nadu
Fort St. George,
Chennai-600 009.

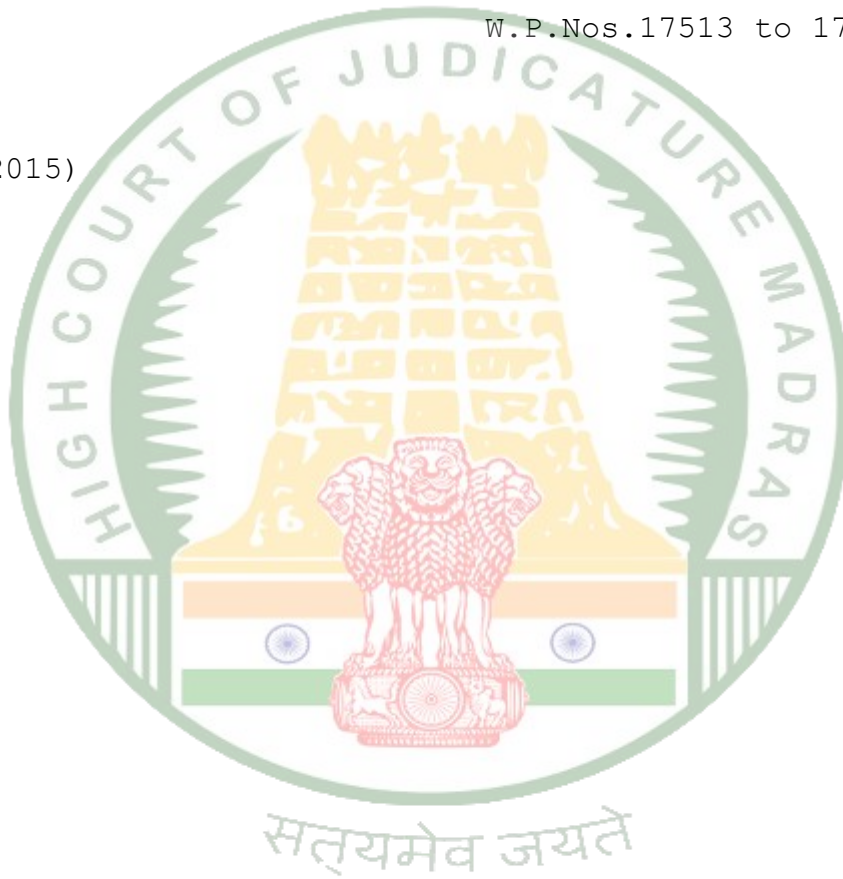
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2. The Managing Director,
State Express Transport Corporation Ltd.,
(Formerly known as Rajiv Gandhi Transport
Corporation Ltd/J.J.T.C. Ltd.,)
No.2, Pallavan Salai,
Chennai-600 002.

+1cc to Mr.S.Packiaraj, Advocate, S.R.No.36893
+1cc to the Government Pleader, S.R.No.36415

W.P.Nos.17513 to 17516 of 2015

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